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Shortcuts to Immigration

The 'Temporary' Visa Program Is Broken

By Jessica Vaughan

- *The number of temporary admissions has more than tripled since 1985, from 9.5 million to 32.8 million, and the number of non-immigrant visa (NIV) issuances has risen by 30 percent over the same period, even with the adoption of the Visa Waiver Program.*
- *The most dramatic growth has been in employment-related categories. In 2001, more than 715,000 foreigners were issued employment NIVs. Another 110,000 non-immigrants received permission to work after arrival.*
- *A significant share of "non-immigrants" more accurately should be called "pre-immigrants", though their route to permanent residency is far less controlled than in the standard immigrant visa program. Nearly one-half of the "temporary" categories allow for applicants to have immigrant intent. In 2001, more than 228,000 NIV holders received green cards.*
- *In 2001, the United States issued 1.2 million long-term NIVs, an even higher number than were issued green cards (1.1 million). In some categories, their stay may be virtually unlimited.*

The United States has experienced explosive growth in the number of foreigners admitted to the country temporarily under the "non-immigrant" visa (NIV) program over the last 20 years — from seven million non-immigrants admitted in 1980 to nearly 33 million in 2001. Some of this growth can be explained by the relative ease of international travel compared to decades past. However, co-mingled with multitudes of Disney World visitors, Filipina grandmothers, Ivorian World Bank economists, and Brazilian entrepreneurs found in the annual stream of NIV visitors are hundreds of thousands of others who would not meet the average American's (or even the average consular officer's) definition of a non-immigrant. If recent trends hold true, well over 100,000 of those entering this year on an NIV will have a green card within five years.[1]

Hundreds of thousands more will remain here illegally. The Immigration and Naturalization Service (INS) estimates that roughly 3.2 million of the estimated eight million illegal immigrant population, or 40 percent, originally entered the country on non-immigrant visas. That is a troublingly high number of visa mistakes made each year, with profound security, fiscal, and social consequences. The most obvious of these was the attack on September 11, 2001, which was carried out by terrorists who entered the country on NIVs issued by U.S. consular officers.

In addition to making a major contribution to illegal immigration, the NIV program as it now functions has a noticeable impact on the U.S. labor market that is largely unfettered. In 2001, more than

Table 1. Non-Immigrant Visas (NIVs)

Year	Number of Visas Issued	Number of Admissions*
1985	5,796,034	9,540,000
1990	6,034,253	17,574,000
1995	6,181,822	22,641,000
2000	7,141,636	33,690,000
2001	7,588,775	32,824,000

* Numbers are approximate.
Source: U.S. State Department and INS.

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715,000 foreigners were issued NIVs to fill U.S. jobs, and another 110,000 visitors received permission to work here after arriving.[2] Further, the NIV program has evolved into an alternative entree to permanent residence that is far less controlled than is the existing immigrant visa (IV) program. Finally, the NIV program is rife with fraud, which adjudicators have few effective tools to fight. For these reasons, the NIV program deserves the urgent attention of policymakers as they consider measures to improve homeland security.

Number of Visitors Rising Steadily

The State Department records the numbers of NIVs issued at its embassies and consulates. Throughout most of the 1990s, the number was close to six million per year. In 2001, the figure jumped to about 7.6 million issuances, a 30 percent increase since 1985. These figures do not include the number of non-immigrant visitors who came in under the Visa Waiver Program (VWP), authorized in 1986, which enables citizens of 28 countries to enter without a visa if they are staying 90 days or less for the purpose of tourism or business. VWP entries numbered about 17.7 million in 2000, up from 4.8 million in 1990. Another 30,000-50,000 people are granted temporary admission each year under the Attorney General's parole authority for emergency or humanitarian purposes, such as medical treatment, who are in a status roughly comparable to a non-immigrant.

The INS keeps track of the number of nonimmigrant admissions. In 2001 these numbered a record 35 million at airports, another one million at sea ports of entry, and an additional 195 million at land entry points.[3] These numbers include NIV holders, VWP admissions, and Canadians and others who may be admitted without visas. The number of recorded admissions is not the same as the number of

Table 2. Types of NIVs

Symbol	Description	Maximum Stay	Issued in 2001
A	Foreign Government Official	Duration of Assignment	78,288
B	Temporary Visitor (Business or Pleasure)	12 Months	5,983,150
C, C-1/D	Transit	29 Days	200,387
D	Crew Member	29 Days	30,095
E	Treaty Trader or Investor	Unlimited	36,886
F	Student	Duration of Study, plus 12 Months for "Optional Practical Training" Work	319,517
G	International Organization Rep.	Duration of Assignment	32,877
H	Temporary Worker or Trainee	Depends on Type; May Be Several Months or 6 Years Plus Extensions	348,995
I	Journalist	Duration of Employment or Assignment	13,799
J	Academic Exchange Program Visitor; Au Pair; Summer Worker	Duration of Program; 1-7 Years	299,958
K	Fiance(e) or Spouse of U.S. Citizen	90 Days	28,712
L	Intracompany Transferee	1-7 Years	120,538
M	Vocational Student	1 Year or Course of Study + 30 Days, Plus 6 Months "Optional Practical Training" Work	5,658
NATO	NATO Official	Duration of Assignment	4,723
N	Family of Retired International Organization Employee	6 Years	14
O	Renowned Professional or Performer	Duration of Work; May Be Unlimited	10,871
P	Athlete, Artist, or Other Entertainer	Athletes (10 Years); Others (Unlimited)	34,018
Q	Cultural Exchange/ Work Program Visitor	Non-N. Irish (15 Mos.); N. Irish (3 Years)	1,618
R	Religious Worker	5 Years	11,512
S	Informant on Criminal Activity	3 Years	0
NAFTA (TN)	Canadian or Mexican Professional	Unlimited	1,827
T	Victim of Trafficking/Exploitation	Unlimited	0
U	Victim of Domestic Violence	Unlimited	0
V	Green Card Applicants	2 Years; Plus Possible 2-Year Extension	25,332

* Source: U.S. State Department.

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individuals who visited, because those who enter more than once a year are counted by the INS each time. The number of non-immigrant admissions has been increasing steadily since 1985, with a very slight drop in 2001(see Table 1). Since 1995, the number of visits has increased by 50 percent, and since 1985, the number of visa issuances has more than tripled.

There are no limits on the total number of non-immigrants who can enter each year, although some categories are capped. The H-2B category, used mainly for non-agricultural seasonal workers, is capped at 66,000 approved visas per year, and admissions have never come close to the cap. The H-1C category for nurses is limited to 500 per year (and no more than 25 to each state). Under the TN category created under the North American Free Trade Agreement (NAFTA), Mexican approvals are limited to 5,500 per year.

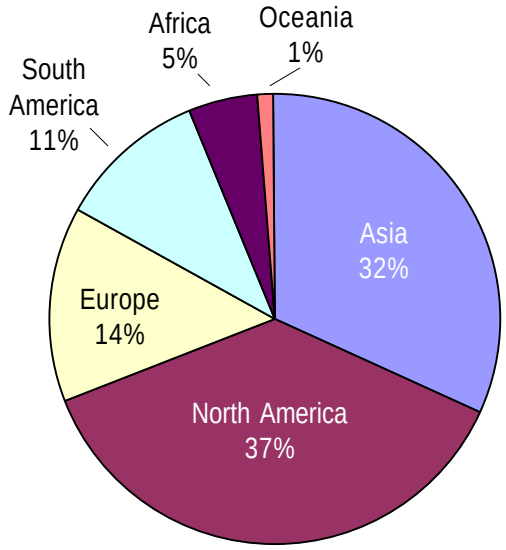
The controversial H-1B category for skilled workers, many of whom work in the technology field, is nominally limited by statute. The law caps the number of certain new approvals at 195,000 in 2001, 2002, and 2003. Unless changed by new legislation, it will revert to 65,000 in 2004. However, only between one fourth and one-half of the people approved as H1-B workers are actually subject to the cap. Those working for educational or non-profit organizations and those extending their stay or changing jobs are not counted against the cap.[4]

Who Are the Visitors?

Of all the non-immigrant arrivals in 2001, about half were citizens of just four countries: Japan, the United Kingdom, Mexico, and Germany. Some categories, particularly the employment-related categories, are dominated by citizens of certain countries. In 2001, Japanese received 42 percent of the Treaty Trader (E) visas; Indians received 34 percent of the Temporary Worker (H) visas, followed by Mexicans, with 20 percent; and British applicants received 22 percent of the O visas for "extraordinary" scientists, artists, and others.[5]

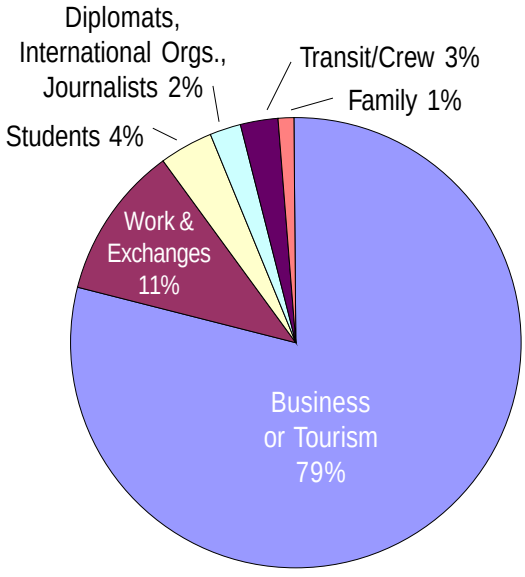
Temporary visitors are admitted for a wide variety of purposes and lengths of stay. The most well-known categories include tourists, business people, students, and diplomats, but there are also special categories for industrial trainees, airline crews, journalists, religious workers, employees transferred by international corporations, and fiancés of U.S. citizens, among many others. Table 2 provides a list of all non-immigrant visa categories, and the accompanying pie charts break down the distribution of visas according to region of nationality and purpose of visit. The growth in the number of visas for business or tourism sets the pace for the overall growth in NIV use, because that is the category with the largest number of visitors. Much of this growth is due to the mandatory replacement of old-style Mexican border crossing cards with new machine-readable cards with a biometric indicator. Such a replacement counts as a reissuance.

Figure 1. NIV Issuances by Region



However, some other categories are seeing particularly dramatic spurts in use. These categories are nearly all employment-related (H, J, L, O, R,

Figure 2. NIV Issuances by Purpose



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NAFTA). Table 3 is an analysis of the change in the number of NIV issuances by category between 1997 and 2001.

The number of issuances in the new V category is expected to grow tremendously in the next couple of years. This visa was created by the Life Act of 2000 for spouses and children of green card holders who have been waiting more than three years for a decision on their application for permanent residency. The State Department expects as many as 500,000 people to qualify in the near future.[6]

How Long Can Visitors Stay?

Non-immigrant visas are issued by consular officers working in U.S. embassies and consulates overseas. According to the law, they may be valid for as little as one entry within a limited time period or for unlimited entries for a period of up to 10 years, or something in between, according to the category of visa, the reciprocal agreements in place with each country, and the discretion of the consular officer. However, officers have long been encouraged to issue visas for the maximum period of validity, to reduce the need to repeatedly adjudicate applications from qualified travelers. As the theory goes, if an applicant is going to overstay, he only needs one opportunity.[7] A March 15, 2001, telegram to all posts from the Visa Office (a department within the Bureau of Consular Affairs at State) urged officers to issue visas of shorter validity "only in exceptional circumstances. Limiting visa validity ... opens our posts to charges they are treating applicants from the host country unfairly, and creates additional workload while doing little, if anything, to discourage determined intending immigrants from remaining in the United States." Consuls were told in the cable that INS inspectors at the port of entry are "better positioned" to identify intending immigrants, and were encouraged to leave that job to the INS.[8] In response to an investigation by the GAO into visa issuances to the 9/11 terrorists, State has said it will soon limit the maximum validity of NIVs to five years.[9]

Table 3. Growth in NIV Issuances

	1997	2001	% Change
A	79,291	78,288	-1
B	4,749,169	5,983,150	26
C	198,277	200,387	1
D	33,067	30,095	-9
E	29,758	36,886	24
F	288,582	319,517	11
G	29,221	32,877	13
H	161,278	348,995	116
I	12,056	13,799	14
J	213,687	299,958	40
K	13,455	28,712	113
L	80,065	120,538	51
M	7,359	5,658	-23
NATO	5,112	4,723	-8
N	21	14	-33
O	5,941	10,871	83
P	27,548	34,018	23
Q	1,290	1,618	25
R	6,373	11,512	81
NAFTA (TN)	511	1,827	258
V	-	25,332	-
ALL	**5,942,061**	**7,588,775**	**28**

The INS inspector at the port of entry makes the decision to admit the applicant and determines how long the alien will be permitted to stay, in accordance with the statutory limits and the alien's needs (See Table 2 for maximum stays allowed). In 2001 about 573,000 people seeking admission as non-immigrants were turned away by INS inspectors.[10]

Currently, most of those coming for business or pleasure, the largest category of visitor, routinely are given a six-month stay, with the possibility of obtaining an extension for an additional six months. In April 2002, in one of the most significant attempts to close loopholes in the law that made it easy for the September 11 hijackers (and any illegal alien) to operate, the INS proposed to change its operating procedures so that visitors who arrive with a B-2, or tourist, visa will be admitted for a period of 30 days, unless they can demonstrate a compelling need to stay longer. According to INS statistics, 73 percent of B-2 visitors depart within 30 days, and 51 percent of those visitors depart within 13 days.[11] Even so, the proposed new policy is bitterly opposed by immigrant advocacy groups and foreign vacation homeowners.

The INS proposal reflects the agency's concern that the policy of automatically granting a six-month stay "may lead individuals to develop permanent ties to the United States, including unlawful employment, that contribute to the problem of visa overstays." In addition, such a lengthy authorized period of stay allows terrorists, drug dealers, and other undesirable temporary visitors to go about their business in this country for too long before they might come to the attention of immigration enforcement authorities.

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These concerns are valid. It is common practice for prospective immigrants who have been given multiple-entry NIVs to attempt to award themselves an approximation of permanent residency by going and coming from the United States every six months. INS inspectors often do not notice or choose not to interfere, as in the case of Mohammed Atta and Marwan al Shehhi, two 9/11 ringleaders who were granted reentry even after overstaying their tourist visas. A typical explanation offered by applicants seeking renewal of their NIV or readmission at the port of entry after a six-month stay is, "Well, the [INS] officer gave me six months, so I decided to use it."

The other NIV categories have different maximum stays, which are usually tied to the purpose of the visit. Many of the newer categories, such as T visas, for victims of exploitation, and U visas, for victims of domestic violence, offer unlimited stays, as they are intended to be used as a stepping stone to permanent residency.

NIV Workers in the Workforce

Though it is often associated with tourists, jet-setting businessmen, and foreign students, the non-immigrant visa program also provides a significant supply of workers to the U.S. labor force. There are nine categories of non-immigrant visas for workers, and in the last five
years, these NIV categories brought in more than two million new workers, plus more than 710,000 spouses and children (See Table 4).

These workers fill high-skill jobs such as computer programmers and professional athletes and relatively unskilled and low-paying jobs such as babysitters, agricultural workers, and hotel staff. The INS attempts to track the occupations of those who are admitted in certain NIV categories.[12] In 2001, the largest number was recorded in the professional category, followed by executives and managers (See Table 5). The data are more interesting when broken down by visa category. The H-1B category is the most diverse with respect to occupations, with admissions in every kind of job. Most admissions were to executives or managers (98,000) or engineers (65,000), but there were also at least 13,000 marketing and sales personnel admissions, plus many teachers, writers, lawyers, librarians, veterinarians, "personal service occupations," administrative assistants, more than 1,300 student entries, and even 63 homemaker entries. Although the category is supposed to be reserved for professionals, over 36,000 entries listed a non-professional occupation.

The occupation recorded most frequently by far in the J-1 exchange program was student (more than 112,000), but there were also more than 12,000 machine operator, more than 11,000 teacher, and more than 6,300 personal service worker entries. The most frequently reported occupation for Q-1 cultural exchange visitors was "food and beverage preparation and service." The O-1 category for extraordinary workers brings in mostly writers, artists, and entertainers, but also more than 3,000 executive entries and more than 1,000 doctor entries.

The category for NAFTA professionals, which is by far the fastest-growing category, recorded admissions from more than 16,000 executives and managers, more than 10,000 computer scientists, and more than 10,000 engineers. This category seems to have partially replaced the now-defunct H-1A program

Table 4. Issuances to NIV Workers by Year

	1997	1998	1999	2000	2001	Total
Treaty Trader/Investors (E) [1]	29,758	30,232	32,948	36,520	36,886	166,344
Temporary Worker/Trainee (H-1, H-2, H-3)	114,072	136,076	177,620	210,044	253,028	890,840
Exchange Visitors (J-1) [2]	89,800	96,200	105,700	118,400	130,900	541,000
Intracompany Transferee (L-1)	36,589	38,307	41,739	54,963	59,384	230,982
Extrordinary Scientists, etc. (O-1, O-2)	5,193	6,035	7,194	8,360	8,584	35,366
Athletes, Artists, Entertainers (P-1, P-2, P-3)	26,941	30,064	30,572	34,525	32,998	155,100
Exchange Programs (Q-1, Q-2)	1,290	1,312	1,836	2,382	1,618	8,438
Religious Workers (R-1)	5,082	5,450	6,497	7,418	8,503	32,950
NAFTA Professionals (TN)	171	295	484	906	787	2,643
TOTAL	**308,896**	**343,971**	**404,590**	**473,518**	**532,688**	**2,063,663**

[1] Figure includes spouses and children.
[2] Figure is 1/2 of the year's total, as a conservative estimate of the number of workers, as opposed to students, in the category.
Source: U.S. State Department.

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passed in the mid-1990s to address a nursing shortage. More than 4,400 NAFTA admissions were to nurses, which is more than were admitted in the last five years as H-1As.

The application process in all of the employment-related NIV categories is more complex and requires an extensive amount of documentation compared to other NIV categories. Most require the applicant's employer to file a petition, usually with the INS, that must be approved before the visa can be issued. Some require the employer to obtain approval from the Department of Labor after guaranteeing that the employer will pay the "prevailing wage" to the worker. However, most employment NIVs, unlike employment-based Immigrant Visas (IVs), do not require the employer to demonstrate that he cannot find U.S. workers (the labor market test). Table 6 summarizes the employment-based NIV categories and the requirements.

Exchange Visitors. A significant percentage of those who enter in the exchange visitor (J-1) category can also be considered workers. The J visas are issued for educational and cultural exchange program participants in 11 categories, including high school students, business trainees, teachers, professors, doctors, official international visitors, camp counselors/resort workers, and au pairs. About 262,000 J-1 visas were issued in 2001.

No information is publicly available on how many visas are issued in each of these 11 categories, although it has been reported that about 30,000 a year are for the "trainee" category.[13] INS data on the occupations of entrants suggests that 50 to 80 percent of those admitted on J visas in 2001 should be considered workers.

The J category periodically receives attention as abuses are reported to the State Department or picked up by local media. Early in 2001, a Maryland company was found to be recruiting experienced foreign electricians as J-1 "trainees" for lease to non-union contractors at cut rates.[14] In the summer of 2002, Maryland and Vermont employers were investigated by the State Department after participants in a cultural exchange (they were hired to sell produce at roadside stands in Maryland and clean hotel rooms at a Vermont resort) complained of filthy housing conditions, docked pay, dangerous working conditions, and other forms of exploitation.[15]

Table 5. Occupations of Non-Immigrant Workers, 2001

Occupation	Admissions
Professional Specialty (Engineers, Computer, Health, Architects, Scientists, Social, Lawyers, Teachers, Counselors, Librarians, Writers)	277,658
Executive, Administrative, Managerial	276,911
Technologists and Technicians	28,264
Marketing and Sales	30,037
Administrative Support	8,208
Service (House, Food, Health, Cleaning)	18,119
Farming, Forestry, and Fishing	48,576
Precision Production, Craft and Repair	3,002
Operators, Fabricators, and Laborers	17,484
Military	189
None (Homemakers, Retirees, Students)	116,239
Unknown or Not Reported	532,121
TOTAL	**1,356,808**

Source: INS.

Other NIV Workers

Those covered by the nine categories of employment-based NIVs are not the only visitors who work in the United States; many of those admitted in other categories are permitted to work as well. These include students (the F-1 visa also allows up to one year for "practical training" after the degree is earned, which is any kind of work related to the student's degree), dependents of diplomats, parolees, and those in the "pre-immigrant" (T, U, V) categories.

To get a job legally, these individuals must apply for an Employment Authorization Document (EAD) from the INS. In 2001, approximately 110,000 individuals present on non-employment-based NIVs were issued their first EAD. Three-quarters of the way through the 2002 fiscal year, about 143,000 first-time EADs had been issued to non-immigrants. (See Table 7).

The NIV Adjudication Process

Those foreigners who require a non-immigrant visa to enter the United States in most cases apply to the U.S. embassy or consulate in their home country. Depending on the country and the applicant, the process can be as simple and predictable as visiting an ATM, or more like a trip to the Department of Motor Vehicles. The

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demand for access to the United States is tremendous in most countries, whether from those undertaking legitimate business or tourism, or from those seeking to escape difficult political or economic circumstances at home. The result is an enormous volume of applications (about 10 million in 2001) that must be adjudicated by a relatively small pool of about 600 consular officers who handle non-immigrant visas, not all on a full-time basis.[16]

NIV adjudication procedures vary from post to post and reflect the diverse worldwide applicant pool. The only things common to all NIV-issuing posts are the application documents and the law and regulations on which officers must base their decisions. Posts have considerable leeway in determining how applications will be submitted, which applicants will be interviewed, and how applicants will be expected to demonstrate their eligibility, i.e. documentary requirements, and the standards, or profiles, that will be used to evaluate applicants. Some consular section chiefs place a high priority on fraud detection and on working with local officials to root out counterfeiting and bogus visa "consultants." Other supervisors are more oriented toward "customer" service and speed in processing.

While most section chiefs probably strive for some balance between the two approaches,fraud control and customer service, the emphasis from the Bureau of Consular Affairs in the last decade has been decidedly in favor of the latter. Since the late 1980s, and particularly so under the nine-year tenure of former Assistant Secretary for Consular Affairs Mary Ryan, the State Department has increasingly come to view both immigrant and non-immigrant visas as a significant management problem, and has devoted considerable attention to finding ways to simultaneously facilitate travel to the United States and to alleviate the workload. Initiatives such as the Visa Waiver Program, on the NIV side, and 245(i), on the IV side, are two of the most notable changes that have been implemented in pursuit of these goals. Ryan also strove to reinvent consular affairs as an exercise in customer service; for example, in 2000 the Bureau established such goals for itself as "Delivering Great Service," "Fostering Partnerships," and "Internal Reinvention."[17] Ryan was forced into early retirement in mid-2002 after intense Congressional and public criticism that this approach resulted in policies that facilitated the entry of the 9/11 hijackers (see below).

An internal audit conducted in 2002 by the State Department's Office of the Inspector General noted the lack of consistancy among posts and uneven oversight from the Bureau that, among other issues, has rendered the current system "inadequate to the task." The audit found that some posts are very well managed, trying out new approaches and measuring their effectiveness in terms of quality decision-making, while others have adopted labor-saving shortcuts more or less blindly.[18] Ryan's replacement, Maura Harty, while defiantly calling the criticism of the Bureau "unfair" and maintaining that "properly coordinated intelligence is the real key to protecting America's borders," proposes to tightly centralize authority over visa procedures, increase post oversight, and improve officer training, among other changes.[19]

The Immigration and Nationality Act (INA) is the basic law that governs visa adjudications — the

Table 6. Requirements for NIV Workers

Symbol	Description	Petition?	Labor Market Test?	Wage Test?
E	Treaty Trader	No	No	No
H-1B	Specialty Occupation	Yes	Sometimes*	Yes
H-1C	Nurses	Yes	Yes	Yes
H-2A	Agricultural Worker	Yes	Yes	Yes
H-3	Trainee	Yes	Yes	No
L	Intracompany Transferee	Yes	Yes	No
O	Extraordinary Worker	Yes	No	No
P	Ordinary Athlete or Entertainer	Yes	No	No
Q	Exchange Program	Yes	No	No
R	Religious Worker	No	No	No
TN-Canadian	NAFTA Professional	Yes	No	No
TN-Mexican	NAFTA Professional	Yes	No	Yes

* A labor market test for H-1B applicants is required if the employer is considered "H-1B dependent" or has been a "willful violator" of immigration law, and if the prospective worker earns less than $60,000/year or has less than a master's degree.

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kinds of visas that are available and the grounds of ineligibility.[20] The State Department's Foreign Affairs Manual (FAM) provides more detailed regulations and guidance on how to apply the statute.[21] In addition, the Bureau publishes the *Consular Best Practices Handbook* (not available to the public), issues clarifications, and provides direction in telegrams and memos to posts.

To qualify for a non-immigrant visa, the purpose of the applicant's visit must fall within one of the defined categories (A through V) and the applicant must prove to the consular officer and INS inspector that he is likely to return to a home in a foreign country (unless he is applying in categories E, H-1, K, L, N, O, P, S, T, U or V). The consular and INS officers are required to assume that the applicant intends to remain permanently in the United States, with the burden of proof on the applicant to show otherwise. Failure to demostrate compelling ties to a home abroad is by far the most common reason for an NIV to be refused (79 percent of all refusals in 2002).[22] Finally, the applicant must not be excludable under one of the grounds stipulated by the INA. The statute excludes known criminals, terrorists, drug addicts, Nazis, draft dodgers, and those who have been deported previously, among other categories.[23] While these laws and regulations do provide some parameters and instructions, the day-to-day adjudications are really fairly subjective and colored by the individual officer's way of thinking and by pressure from supervisors, post leadership, and the Bureau.

All NIV applicants must submit the basic application form DS-156, passport photo, and other documents required for certain categories of applicant, such as evidence of acceptance at a university or approved petition for employment. The regulations suggest that officers consider the applicant's overall financial situation, credibility of plans, and ties abroad.

Table 7. Top Non-Immigrant Categories for EADs, 2001 and 2002 (Partial Year)

Category	2001	2002*
Students (Practical Training)	68,841	48,214
Parolees	24,451	18,416
Dependents of J-1s	6,949	5,329
Vs (Green Card Applicants)	1,327	64,264
TOTAL (All NIV Categories)	109,782	143,412

* 10/1/01 - 7/1/02
Source: INS Statistics Office

Therefore, a typical consulate will also require or encourage all applicants to submit a letter from their employer stating their position and salary (the "job letter") and a letter from their bank stating how much money is in their accounts (the "bank letter"), or other evidence of their ties to their home country. Often applicants will bring other documents to bolster their case, such as letters from family or friends in the United States to "verify" the purpose of the visit, or a round trip ticket to "prove" they intend to return. One popular document in countries with high refusal rates is a telegram from a stateside relative informing the applicant that a close relative has died or is about to, and urgently pleading for the applicant to visit.

Few interviews. As part of the general effort to reduce the workload of the consulates, promote U.S. travel, and improve service over the last five years, the Bureau of Consular Affairs has encouraged posts to adjudicate as many non-immigrant visas as possible on the basis of the application and supporting documents alone, and without requiring the applicant to submit to an interview. The Bureau's inclination to streamline the process has been applied only in pursuit of facilitating NIV approvals. Efforts on the part of consular officers in the field to get permission to waive interviews in order to expedite refusals have been rebuffed. Officers were told that they should not refuse and applicant without an interview. In a message to all posts in June 2001, the Bureau defended this approach: "This policy is based on the fundamental principle of fairness that the alien should be given an opportunity to be heard and to personally make his/her case to a consular officer."[24]

One senior Bureau official has estimated that, before 9/11, about 20 percent of applicants are interviewed. This is a dramatic departure from past practice, when officers were trained not to rely on documents alone, because they are easily forged or fabricated in many countries and require a lot of time and effort to verify. Instead, officers were trained to rely on clues about the applicant's intent that can be gleaned from a brief conversation. For example, officers look at language skills, personal appearance, general demeanor or nervousness, and uncertainly in answering questions, among other things, to help them decide if the applicant is credible.

The GAO and OIG reports both found that over the last year many posts had "significantly" increased the number of interviews, and that in many posts virtually all applicants are now interviewed. The

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Department does not release post-specific refusal rates, so it is yet unclear if this has resulted in significantly more refusals.

The larger posts, especially those with large numbers of qualified applicants — Milan and Tokyo, for example — require prospective visitors to submit NIV applications through a drop box or the mail, and discourage or refuse to accommodate walk-ins. Other posts, often the smaller ones like Lome, in Togo, for example, but also "visa mills" such as Guatemala City, require most applicants to apply in person, and can complete the process in the same day. With encouragement from the Bureau, 38 posts have developed Travel Agency Referral Programs (TARPs), whereby applicants may submit their forms and fees to a travel agency, which screens them for completeness, batches them, and forwards them to the consulate for adjudication. The most notorious such program was U.S. Visa Express, launched by the embassy in Riyadh in June 2001, just in time for three of the 9/11 hijackers to obtain their visas. According to the GAO report, the Saudi TARP went further than most in that it delegated the financial screening of the applicants to the travel agents, which was explicitly permitted in the FAM, though not all posts did so.

The drop box and TARPs were introduced as a way to provide good service to applicants. However, while they cut down on interviews, these methods produce no apparent gain in processing time, another legitimate measure of customer service. Applicants in Milan and Tokyo rarely need to come for an interview, but have to wait several weeks for their visa. Posts that do not require the use of a drop box or TARP routinely can turn the visa around within the same day.

Profiling applicants. Because officers have a limited time in which to make a decision — usually about two to three minutes, whether the applicant is present or not — they must rely on known or assumed patterns of behavior, or profiles, to help them decide to issue or refuse a visa. According to the law, it is very difficult for a young, single adult to qualify for a tourist or business visa, and nearly impossible for someone who is unemployed. Applicants working in low-paying jobs, especially jobs such as nannies and day laborers, which are often filled by illegal immigrants in the United States, are not likely to qualify.

Consular officers also look at the applicant's travel history. If the applicant has traveled to the United States before and returned after a brief stay, he probably will get another visa, unless conditions in the country have changed drastically. If the applicant has just returned from a six-month visit and is applying for another visa, he probably will be refused. In the case of student or employment applicants, the officers try to determine if the applicant is qualified for the activity covered by the visa by assessing language and job skills. Another key criterion for student visas is the applicant's ability to finance the course of study, and failure to demonstrate a credible source of funding is one of the most common reasons for refusal.

Posts have little hard evidence on which to formulate these profiles. INS inspectors will detect a few intending immigrants at the port of entry, usually on a re-entry attempt, and posts receive notification of the visa cancellation. Another source of information in many posts is the immigrant visa applicant pool, because a large proportion of the IV applicants have already lived in the United States, often illegally, before qualifying for a green card. The automated entry-exit tracking system enacted in 1996 and requested again in the USA Patriot Act of 2001 eventually will provide a wealth of more timely data on visa overstayers that can be used to evaluate how well posts screen NIV applications.

Database checks. The final step before the issuance of the NIV is the name check. Every consular post is linked electronically to the Consular Lookout and Support System (CLASS), a database listing individuals who have been refused visas previously or who may not have applied yet, but who have been identified as presumably ineligible. Examples of the latter type would be known terrorists, drug smugglers, etc. It also contains information from the INS lookout system, NAILS. Information sharing with intelligence agencies and the INS has improved in the last year, resulting in a doubling in the size of the CLASS database to more than 15 million names. More detailed checks are required for individuals deemed to be a higher security

Table 8. Inadmissable Non-Immigrant Applicants, 2001

Category	2001
Visa Waiver Program	10,847
Auto Arrivals	71
Transit Without Visa	1,773
Other Non-Immigrant	560,612
TOTAL	573,303

Source: INS Statistics Office

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risk.[25] The system is far from foolproof, however, as it depends on the officer's judgement as to whether the hits match the applicant, the quality of the translation of names from non-Roman alphabets, the quality and timeliness of the data from other agencies, and the reliability of the communications network supporting it.

The database does not contain the names of those who have applied for immigrant visas, as was the case in the system that was used before CLASS. This makes it easier now for prospective immigrants to obtain a NIV in order to bypass the green card waiting list. The existence of an IV application is a critical piece of information in evaluating an NIV applicant's intentions, and the decision not to include IV applicants in CLASS speaks volumes about the Bureau leadership's lack of interest in enforcing the law with respect to immigrant intent.

The visa itself is a machine-readable sticker containing the applicant's digital photo, the details of the visa (type, period of validity, date issued, etc.) and other security features. All applicants pay a fee of $100, regardless of whether the visa is issued. State is currently considering the possibility of levying a $10 surcharge on visas that will be placed in passports that are not machine-readable.

Inspection by INS. Upon arrival in the United States, each applicant for admission is inspected by an INS official. The inspector performs a name check on an interagency database containing information from 30 federal agencies. If the traveler is admitted, the inspector stamps the passport and indicates the authorized duration of stay. Some applicants are referred to Secondary Inspection, either because their name showed up on the watch list, because they are unable to answer routine questions satisfactorily, or because they are missing documents necessary to their visa. In some cases, particularly those involving missing documentation, for example, the inspector will waive the alien into the country (9/11 ringleader Mohammed Atta was waived in this way). In other cases, the inspector may conclude that the traveler is not a bonafide nonimmigrant, for example, if the applicant is carrying a U.S. driver's license or pay stubs. The traveler is given the option to appear before an immigration judge or withdraw his application to enter, which is the option chosen by most. Then, the visa is cancelled and the appropriate consular post is notified. If it is determined the airline should not have allowed the passenger to travel (check-in counter agents are expected to screen the visas of their passengers), the airline must pay the cost to return the traveler (or the cost of incarceration, if appropriate) plus a fine of $3,000. Otherwise, the costs associated with the removal must be negotiated with the passenger. Visa Waiver Program travelers undergo the same inspections process, but must have round-trip tickets and must waive the right to a hearing if found to be excludable.

Since 1998, the number of persons found to be inadmissible at the port of entry has hovered between 560,000 to 606,000 per year, nearly all of whom (99.99 percent in 2001) are identified at airports or sea ports. (See Table 8). In 2001, about one out of every 59 applicants for temporary admission was turned back at the port of entry.

NIV Fraud

By all accounts — GAO reports, State Department OIG reports, Congressional hearings, anecdotes, and the hard evidence of the presence of 3.2 million NIV overstayers — fraud is rampant in the non-immigrant visa program. Problems include identity fraud, document fraud, counterfeiting, corrupt employees (both American and foreign), and widespread lying and misrepresentation on the part of applicants.

The INA states clearly that visa fraud must not be tolerated: "Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible," and permanently so (Section 212(a)(6)(C)(i)). Yet consular officers have few tools at their disposal to help detect and deter fraud. Officers receive very little in the way of fraud training. Out of the 26-day consular training course, of which seven days are devoted to NIV training, the new officer receives only four hours of general fraud training, plus a couple of sessions on adjudicating and interviewing. A new one-hour session with security officers on terrorism and fraud was recently added.[26] Most of the training occurs on the job over the course of months, as officers come into contact with documents, hone their language skills, and develop a feel for the applicant pool at post. As is the case with most visa procedures, posts have wide discretion on how much emphasis they give to fraud issues. Some posts have a full-time American officer and/or local employees charged with fraud prevention; in others, sometimes even those designated as "high-fraud posts," consular officers must carve out time for anti-fraud activities from the rest of the crushing work load. In

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some posts, officers are free to launch investigations as they see fit. However, if fraud is not a high priority for the supervising officer, the junior officers, who usually do the NIV work, may be discouraged from spending time on it, or the work may be passed off to the post security officers, who have other pressing responsibilities, such as protecting the embassy and its employees.

Minimizing fraud penalties. Even if the intrepid consular officer has the time and the boss's blessing to pursue and punish fraud, he or she still faces a major obstacle in the form of the FAM, the set of regulations guiding foreign service work. The Bureau has elaborated on the one sentence-long statement on fraud in the INA with a full 22 pages of daunting legalistic instructions that in practice serve as a powerful disincentive to invoking this section of the law, even in seemingly straightforward cases. Early on, these instructions include a caveat essentially implying that invoking 212(a)(6)(C)(i) and making someone permanently inadmissible because they resorted to fraud in their application is a very mean thing to do.[27] In the pages that follow, the FAM severely narrows the kind of fraud that can result in such a finding of ineligibility. In order to refuse an applicant on the grounds of misrepresentation, the officer must prove the "materiality," or relevance, of the misrepresentation to the ultimate decision. The misrepresentation is not considered material if the officer would have denied the application anyway, or if it was denied because the officer suspected fraud. Lying about one's identity, address, or previous visa applications is not to be considered material. In an incredible rationalization, an alien may not be found permanently inadmissible for fraud if his name is already listed in CLASS, because it is assumed that the officer would have found out and refused the visa anyway. Finally, if the incident passes all the tests in the FAM, in many cases the officer still must submit a detailed written justification for the finding to the Bureau for concurrence. Even with such onerous standards to meet, consular officers still managed to invoke this clause successfully on 14,000 applications in 2001.

Although officers are cautioned about the use of 212(a)(6)(C)(i) because it carries a lifetime bar on entry, there is some fairly generous relief available to anyone found inadmissible for misrepresentation. For the relatively few non-immigrant candidates worldwide who managed to get refused on these grounds, there is a waiver available.[28] Unlike most waivers of ineligibility, which require a close family relationship to a U.S. citizen or permanent resident, anyone may apply for this waiver, and if the applicant requests it, the consular officer must submit the request to Washington, even if the officer does not think the request should be granted.

It is no wonder that most NIV officers will elect to deal with fraud by simply refusing the applicant who uses fake documents under Section 214(b) (the applicant is likely an intending immigrant) and moving on to the next person. The problem with that approach is that it has no deterrent effect or meaningful consequences for the applicant, and reduces the NIV application process to a game of "Can You Fool the Consular Officer?"

The OIG report noted that the Department lacks an effective way for posts to share information on fraud. It suggested that the results of fraud investigations be more systematically collected and shared within the agency and that certain posts be linked with domestic databases to help verify applicant claims.

Many Non-Immigrants Are Really Pre-Immigrants

Immigration law has distinguished between immigrants and non-immigrants since 1819. Immigrant admissions have been numerically limited since 1924. Four kinds of immigrants are currently allowed: close family of citizens and lawful permanent residents, those with an employment offer or very impressive credentials, refugees, and visa lottery winners. Reflecting the higher stakes involved in granting permanent residency, applicants for IVs and green cards receive far greater scrutiny than applicants for NIVs. Immigrant visa applicants have higher standards to meet in establishing their identity and suitability. They must produce birth and marriage certificates. They must submit to an FBI check and produce a clean record from the police in their home country. They must show that they can support themselves, or that someone else will support them. They must show that they are not suffering from certain communicable diseases such as AIDS or tuberculosis. In theory, all of these standards also apply to non-immigrants, but they are not required to prove it to the degree that immigrants are. (The exception is the fiancé (K) visa, where the application process is essentially the same as the immigrant visa application. It is the status of the person that is temporary in that case, not the visit.) Non-immigrant visitors are different — the law assumes that they are leaving at some point.

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Blurring the line between NIV and IV. In recent years, however, the distinction between non-immigrants and immigrants has become blurred, both in the law and in the way the visas are used, to the point where a significant share of the non-immigrant stream more accurately should be called "pre-immigrants." In 2001, more than 60 percent of all those who obtained permanent residency (653,259 out of 1,064,318) did so not by obtaining an immigrant visa, but through an "adjustment of status," which means that they were already present in the United States, sometimes legally, sometimes not. The INS does not know or does not collect information on the original status of all the adjusters,[29] but it does know that at least 228,433 (35 percent) of the 2001 adjusters originally entered the country on non-fiancé NIVs. The NIV category that produces the most adjusters is the pleasure/tourism category (B-2) (94,659), followed by temporary workers (85,227). While these numbers are small relative to the total number of temporary visitors annually, they are large relative to the size of the annual legal immigration stream, and suggest that many immigrants use the NIV as a shortcut to permanent residency.

The adjusters are not randomly distributed across categories or countries of origin. For example, more than 40 percent of the adjusters from tourist visas come from just eight countries (Mexico, the Philippines, Colombia, China, Korea, Brazil, Poland, and India, in that order). About 29 percent of adjusters from student status are from China and Korea. One fourth of adjusters who were exchange program visitors are from China, and 26 percent of temporary workers who adjust are from India.

The policy of allowing NIV holders to apply to the INS to adjust to permanent residency, rather than sending them home to apply at a consulate, is problematic for several reasons. First, it allows these applicants to jump in line ahead of the millions of IV applicants waiting their turn overseas. Second, the State Department has more thorough application review procedures that always include an interview. Paperwork is scrutinized by consular officers and local employees familiar with the local language and documents. It is much easier to verify foreign documents from in-country than from an INS office in the United States. The INS often does not interview adjusters, and has few internal controls to guard against even the most basic application fraud. For instance, the INS does not have a common searchable database of applicants to prevent the submission of multiple applications to different offices.[30] Finally, if an applicant should be found ineligible, say for fraud, for criminal activity, or for health reasons, if the person is already living in the United States, the refusal is practically meaningless, as the person is unlikely to be removed. Requiring applicants to apply from overseas ensures that the ineligible applicants who have been living here illegally will effectively deport themselves at their own expense.

The bright line between immigrants and nonimmigrants has dimmed for several reasons. It is in part a predictable consequence of lax enforcement of immigration laws and a lack of strict controls over the NIV process. It also illustrates the degree to which immigration demand is overwhelming the system. Applicants can wait years for an IV to be adjudicated; it is far easier and quicker to get an NIV. Besides, the NIV is the only route for those who lack family ties or an employment offer, short of the diversity visa lottery, and with the worldwide NIV refusal rate is now about 25 percent, the odds are much better in the NIV line.

The demand for access to the United States is so great in countries like India, Korea, and China, that the procurement of a U.S. visa is an industry in its own right. A quick foray onto the Internet reveals countless visa consultants who "guarantee" a visa for a price. The list of NIV categories is a menu of opportunities around which many people arrange their lives — there are schools in India that turn out workers whose education is geared toward qualifying for an H1-B, new religious organizations springing up to satisfy the R visa requirements, and companies set up with the L visa in mind. The worldwide demand is such that the good intentions behind the creation of any NIV category will almost certainly soon be overshadowed by efforts of those who seek to exploit the new opening.

The non-immigrant/immigrant distinction also has been blurred by deliberate policy choices. These include:

- Many non-immigrants are admitted for long periods of time. Twelve out of 24 NIV categories (not including diplomats, journalists, and employees of international organizations) permit visa holders to stay for five years or more, representing about 1.2 million long-term NIV issuances in 2001. That is more than the total number of legal immigrants admitted in that year (1,064,318).

- Many categories explicitly allow for immigrant intent. Under a concept known as "dual intent," applicants in 11 of the 24 NIV categories — either by definition (K and V),

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by statutory exemption (H and L), or in practical application (E, N, O, P, S, T and U) — may receive NIVs without maintaining the pretense of non-immigrant intent. The doctrine of dual intent, which was codified in 1990 and which has been described even by immigration lawyers as "a legal fiction,"[31] says that the applicant may be considered to be seeking admission as a temporary visitor and a permanent resident simultaneously. Recent legislation further allows H-1B workers who have hit the limit of the allowable stay (six years) to receive one-year extensions until their green card is approved, exempting them from the statutory overstay penalties.[32] Only one NIV category (J) carries a requirement that the beneficiary must return home (for two years) before receiving another NIV or immigrant visa,[33] although this requirement can be, and often is, waived.

- Some categories are linked in definition to immigrant visa categories. The requirements for the First Preference Employment-Based workers immigrant visa category are essentially the same as for the L-1A and O-1 NIV categories. It is reasonable to assume that these categories were deliberately defined in the Immigration Act of 1990 in such a way as to allow applicants to convert quickly and easily from NIV to green card. Predictably, fraud in these categories is on the rise. A particularly notorious case involved Johnny Chung, the key figure in the 1996 Clinton/Gore reelection fundraising scandal, who set up a paper business for the sole purpose of bringing in Chinese campaign contributors on L visas, which were quickly converted to green cards. The *Wall Street Journal* recently reported on growing use of L visas by Latin American businessmen seeking to flee harsh economic conditions there by gaining a foothold in the United States.[34]

- Lawmakers are increasingly prone to creating new NIV categories to provide amnesty for special groups. The three most recently created NIV categories (T, U, and V) are different from previously existing categories in that they were set up to benefit special groups, most of whose members are assumed to be already living here, in order to enable them to convert to lawful status that will eventually result in a green card.

- Perennial policy fights over 245(i) amnesty offer hope to overstayers. This controversial section of the law allows illegal immigrants to adjust to permanent residency after paying a $1,000 fine. It was originally enacted in 1994, sunset in early 1998, and was narrowly revived in the LIFE Act of 2000. Its full reinstatement remains a top priority of advocates for illegal immigrants, and the periodic debate over the measure almost certainly contributes greatly to the expectation that a non-immigrant visa overstayer eventually will be able to obtain a green card.

Conclusions and Recommendations

America's non-immigrant visa program is badly in need of attention from policy makers, most obviously because of its attractiveness as an entry option to terrorists and other prospective illegal immigrants. It has grown like a cancer in volume and in complexity. It is an unwieldy technical and bureaucratic mess that resembles the income tax system and, for many, requires hiring a lawyer or a broker to participate in. Moreover, the crushing volume of applications and fraud problems all make it difficult for the federal agencies charged with administering the program to do so effectively.

The fading distinction between America's NIV and IV programs has the potential to substantially undermine the entire legal immigration system. Congress has gone to great pains to define whom America will accept as immigrants. Many legitimately question this structure as well as the numbers of immigrants admitted under it, but that is how our system is currently defined. Furthermore, the IV system has numerical limits and an application process that attempts to keep out the most undesirable applicants through background checks and other controls. The NIV program has no such limits or controls and operates in part as a gray-market alternative to it.

Finally, State's leadership has yet to fully embrace the important role the visa process plays in national security. According to the OIG report, "The post-September 11 era should have witnessed immediate and dramatic changes in CIA's direction of the visa process. This has not happened."

The following reforms would help address these problems:

1. Numerical limits should be established for all categories of temporary workers (H, J, L, E, O, P, Q,

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R, and NAFTA) to help prevent labor market distortions. A labor market test should be part of the petition process.

2. The statute and regulations must provide adjudicators with more tools to fight fraud. Specifically, the definition of "material" in the FAM must be expanded to include all documents submitted in support of an application and all statements made by the applicant. The process for invoking 212(a)(6)(c), the permanent bar on admission to anyone found to have committed fraud or misrepresentation, should apply to any such misrepresentation made in the process. To simplify the process and reduce the workload, such a finding should require only the approval of the supervisory consular officer, not an Advisory Opinion from the Bureau of Consular Affairs. Consular officers should receive more training in fraud prevention. Finally, some, if not all, posts should gain access to certain domestic databases to facilitate verification of applicant claims, as recommended in the OIG report.

3. The overstay problem must be addressed in part through the NIV adjudication process. Consular officers must confidently and unapologetically uphold the law by refusing NIVs to unqualified and marginal applicants. The data from the new automated entry-exit system should be shared with consulates and used to support consular decisions. The entry-exit system should be linked with CLASS. To be effective, the system must generate enforcement actions and removals, and not be used simply to intimidate visitors.

4. The NIV program must be de-coupled from the IV program. The doctrine of dual intent is in direct conflict with the more robust concept that applicants should have to prove non-immigrant intent to qualify for a non-immigrant visa, and should be stricken from the laws and regulations. The names of all applicants who have applied for an immigrant visa or for adjustment of status should be entered in CLASS. Categories such as E, NAFTA, T, U, and V, which are not truly temporary in nature, should be eliminated or processed as IVs, subject to the overall caps and the more thorough application process.

The maximum duration of stay for a non-immigrant should be four years (plus a one-year extension in some categories). The one-year "practical training" option for student visas should be eliminated. Section 212(e), which requires certain exchange visitors to return home to their country for at least two years before receiving another visa, should be extended to cover students, temporary workers, intracompany transferees, treaty traders, cultural exchange workers, and religious workers. NIV holders who wish to apply for permanent residency should be required to do so from their home country or a designated third country in certain narrowly limited cases.

5. A system of accountability for consular decisions must be established that puts quality ahead of quantity and national security ahead of applicant convenience. Performance benchmarks should include quality measures such as overstay rates, INS revocations, and issuances to terrorists or other undesirables, in addition to efficient operations. Such a system should be designed to take full advantage of field officers' experience and understanding of local conditions to improve the process. Further centralization of authority over procedures within CA as has been proposed by Maura Harty is more likely to stifle innovation thna contribute to better adjudications.

6. The NIV program (and the IV program) mission must be un-re-invented from its status as a government service to its proper role as a critical homeland security function. At the very least, adjudicators must be retrained to curb their current overreliance on technologies such as CLASS in decision making and develop a complementary reliance on human interaction and law enforcement instincts. This can be accomplished partly through different training and by rewarding initiative in this direction. Though the State Department clings to the idea that the visa function is best performed by foreign service officers "who can put consular work in a broader context,"[35] this objective can most effectively be realized by the establishment of a Visa Corps of consular specialists, modeled after the State Department's other specialist corps for human resources, information technology, and finance, staffed by skilled specialists interested in a career in visa work, rather than by foreign affairs generalists, as is currently the case.

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End Notes

[1] *The 2000 Statistical Yearbook of the Immigration and Naturalization Service.* Out of all those awarded green cards in 2000, there were 142,363 adjusters who arrived within the last five years; see http://www.ins.usdoj.gov/graphics/aboutins/statistics/index.htm

[2] These figures include NIVs issued in the following categories: E, H, L, O, P, Q, R, TN, 1/2 of all J, and the number of new EADs issued in 2001.

[3] U.S. Department of Justice. Report of the Office of the Inspector General No. I-2002-006, "Follow-up Report on INS Efforts to Improve the Control of Nonimmigrant Overstays," April 2002.

[4] INS News Release, "INS Announces FY 2002 H-1B Processing Through June 30," August 13, 2002.

[5] U.S. Department of State. *Report of the Visa Office 2000*, forthcoming.

[6] U.S. Department of State, "The Budget in Brief Fiscal Year 2003," available at www.state.gov

[7] Unclassified telegram (STATE 45943), "Full-Validity versus Limited-Validity NIVs."

[8] "Department of State Comments on GAO Draft Report," in Visa Process Should Be Strengthened as an Antiterrorism Tool, General Accounting Office Report, October 2002, hereafter referred to as "the GAO Report."

[9] It is worth noting that this theory is not backed up by any publicly available evidence on the number of trips made by overstayers before they roost permanently in the United States. On the one hand, the theory may act as a brake on some officers' approval rates. On the other hand, 10 years is a long time, during which economies of nations can crumble and wars can break out, so that applicants who looked low-risk at the time of issuance might not be years later.

[10] INS Statistics Division.

[11] Testimony of INS Commissioner James Ziglar before the U.S. House of Representatives Committee on Small Business, June 19, 2002.

[12] INS Statistics Office. The figures cited below are admissions, not issuances. According to INS estimates, the admission/issuance ratio for H-1Bs is roughly 3:1.

[13] International Brotherhood of Electric Workers, *IBEW Journal*, January-February 2002, available at http://www. i b e w. o r g/storie s/02journal/0201/p12d_ibew.htm

[14] *Ibid.*

[15] "Foreign Students, Fetid Quarters," *Baltimore Sun*, September 7, 2002, p. 3A; and "Students Given Poor Housing," June 20, 2002, p. 1A, and "Work Program Raises Questions," July 7, 2002, p. 1E, *Burlington Free Press.*

[16] The GAO report, p. 13.

[17] U.S. Department of State. Bureau of Consular Affairs, "Reinvention Goals for 2000," http://travel.state.gov/goals_2000.html

[18] U.S. Department of State, Office of the Inspector General, "Review of Non-Immigrant Visa Issuance Policy and Procedures," December 2002, hereafter referred to as "the OIG report."

[19] *Ibid.*

[20] http://www.ins.udjog.gov/graphics/lawregs/index.htm

[21] http://foia.state.gov/famdir/Fam/fam.asp

[22] INA Section 214(b).

[23] INA Section 212(a).

[24] Unclassified Telegram (STATE 102813).

[25] Bureau of Consular Affairs Fact Sheet, "Initiatives by the Bureau of Consular Affairs to Enhance National Security," September 5, 2002.

[26] Conversation with Jane Gray, Assistant Coordinator of the Department of State consular training program.

[27] From 9FAM40.63 N1.3: "When imposing such a dire penalty, the consular officer should keep in mind the words quoted by the Attorney General in his landmark opinion on this matter. . . . 'Shutting off the opportunity to come to the United States actually is a crushing deprivation to many prospective immigrants. Very often it destroys the hopes and aspirations of a lifetime, and it frequently operates not only against the individual immediately but also bears heavily upon his family in and out of the United States.'"

[28] INA Section 212(d)(3)(a).

[29] In 2001, 320,916 out of the 653,259 adjusters were "other and unknown." Source: INS Statistics Office.

[30] See GAO Report, "Immigration Benefit Fraud: Focused Approach Is Needed to Address Problems," January 2002.

[31] Quoted on americanvisas.com, a web-based national network of immigration lawyers.

[32] The American Competitiveness in the 21st Century Act of October 2000.

[33] INA Section 212(e). Waivers may be granted on several grounds, including a request by a federal or state agency. One controversial use of this waiver is to enable states to place foreign doctors in underserved areas.

[34] "Latin Entrepreneurs Use Visa for Executives to Settle in U.S." *The Wall Street Journal*, August 5, 2002.

[35] Ruth A. Davis, director of the Human Resources Department at State, in a memo responding to the OIG report.

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Backgrounder

Shortcuts to Immigration
The 'Temporary' Visa Program Is Broken

By Jessica Vaughan

The United States has experienced explosive growth in the number of foreigners admitted to the country temporarily under the "non-immigrant" visa (NIV) program over the last 20 years — from seven million non-immigrants admitted in 1980 to nearly 33 million in 2001. If recent trends hold true, more than 100,000 of those entering this year on an NIV will have a green card within five years. This Backgrounder examines these trends and concludes the following:

- The number of temporary admissions has more than tripled since 1985, from 9.5 million to 32.8 million, and the number of NIV issuances has risen by 30 percent over the same period, even with the adoption of the Visa Waiver Program.

- The most dramatic growth has been in employment-related categories. In 2001, more than 715,000 foreigners were issued employment NIVs. Another 110,000 non-immigrants received permission to work after arrival.

- A significant share of "non-immigrants" more accurately should be called "pre-immigrants", though their route to permanent residency is far less controlled than in the standard immigrant visa program. Nearly one-half of the "temporary"categories allow for applicants to have immigrant intent. In 2001, more than 228,000 NIV holders received green cards.

- In 2001, the United States issued 1.2 million long-term NIVs, an even higher number than were issued green cards (1.1 million). In some categories, their stay may be virtually unlimited.

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